IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 1479 OF 2003

IN

SUIT NO. 1399 OF 2003

Rajendra B. Nair .....Plffs.
vs.
Ashok Bhau Jadhav .....Defnds.

D.H. Mehta a/w Ketan Parekh
for the plaintifffs.
A.Y. Sakhare a/w. D.S. Sakhalkar
for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 23rd September, 2005.

P.C. :

1. It is an admitted position that under a conducting agreement the defendant gave his premises to the plaintiff for running his business. The last of the conducting agreement is dated 25.11.2002 which was in force till 24.10.2003. It is the case of the plaintiffs that the plaintiffs have been

dispossesd from the said premises without due process of law on 10.2.2003. On the other hand the case of the defendant is that the plaintiff has voluntarily handed over the possession of the said premises to the defendant on 10.2.2003. In support of the contention that the defendant has voluntarily surrendered the possession of the premises the learned counsel for the defendant has relied upon a letter dated 25.11.2003 addressed by the bank to the plaintiff and a letter dated 1.5.2003 addressed by the plaintiff to the defendant herein. I have perused both the said letters which are forming part of the compilation. From the reading of the aforesaid letter it is not possible to accept the contention of the defendant that there is a voluntarily vacating of the premises on 10.2.2003. On the contrary both the letter dated 25.11.2003 and 13.5.2003 indicates that even on 6.6.2003 he was in possession of the said premises. Having produced no evidence whatsoever to show that he has received the possession of the premises by due process of lasw when admittedly the plaintiff was put in possession under the said conducting agreement, I am of the

prima-facie opinion that there is unlawful dispossession of the plaintiff from the suit premises by the defendant. In that light of the aforesaid, I pass the following order :

(i) Court Receiver, High Court, Bombay is appointed as Receiver in respect of the premises described in Ex.4 to the affidavit-in-reply filed by the defendants being conducting agreement dated 25.11.2002. The area which was in possession of the plaintiff is ear marked on the plan annexed to the said conducting agreement.

(ii) The Court Receiver is directed to take possession of the said area forthwith. The Court Receiver to put plaintiff in possession thereof without security but subject to

royalty which the defendant will be bound to pay. In an event if the defendant is not willing to take agency of the court Receiver the receiver to seal the premises till further orders passed by this court. Till the Court Receiver takes possession ad-interim order to continue.

(iii) Motion disposed off accordingly. No order as to costs.

sd/-

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